

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

VIAHART, LLC,  
§  
Plaintiff,  
§  
v.  
§  
DOES 1-54,  
§  
Defendants.  
§  
§  
§  
§  
§  
§  
§  
CIVIL ACTION NO. 6:18-CV-00604-RWS

## ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 76), which contains her findings, conclusions and recommendations concerning Defendant Hu Qi Bo’s (“Defendant”) Motion to Vacate the Default Judgment and Motion to Dismiss for Lack of Personal Jurisdiction (Docket No. 68). The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court. Plaintiff Viahart, LLC, a Texas-based toy manufacturer, filed the above-captioned civil action against multiple defendants, alleging trademark counterfeiting and infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114, and unfair competition and false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Docket No. 31. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636. Defendant filed the present motions thereafter. Docket No. 68.

After reviewing the pleadings, the Magistrate Judge issued a Report recommending that (1) Defendant's Motion to Vacate the Default Judgment and Motion to Dismiss for Lack of Personal Jurisdiction (Docket No. 68) be denied and (2) Plaintiff's request for attorneys' fees, as the prevailing party, be granted (Docket No. 71 at 30). Docket No. 76. No objections were filed

in response. Defendant is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, Defendant is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a Magistrate Judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge (Docket No. 76) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that Defendant's Motion to Vacate the Default Judgment and Motion to Dismiss for Lack of Personal Jurisdiction (Docket No. 68) are **DENIED**. It is further

**ORDERED** that Plaintiff's request for attorneys' fees (Docket No. 71) is **GRANTED**, and Plaintiff shall recover \$11,577.50 from Defendant for attorneys' fees.

**So ORDERED and SIGNED this 12th day of September, 2022.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE